

S.B.CIVIL WRIT PETITION NO.1735/2004

Prahlad Kumar Minglani

Versus

State of Rajasthan & Ors.

Date of Order :: 14th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Nitin Trivedi, for the petitioner.
Mr. P.K.Lohra, for the respondents.

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The petitioner while holding the post of Clerk-cum-Cashier with the respondent Bank was convicted by the Court of Additional Chief Judicial Magistrate, SPE Cases, Jaipur by judgment dated 27.6.1987 for the offences under Sections 409, 467, 420, 468, 471 and 477-A of Indian Penal Code. Even after conviction under the judgment referred above the petitioner was allowed to continue in service of the bank as the Sessions Court, Jaipur suspended the sentence awarded by the trial court. After dismissal of appeal by the Sessions Court, Jaipur the Assistant General Manager-I, State Bank of Bikaner & Jaipur, Regional Office, Jodhpur by its order dated 18.3.2002 dismissed the petitioner from service w.e.f. 27.6.1987 i.e. the date of judgment passed by Additional Chief Judicial Magistrate, SPE Cases, Jaipur convicting the petitioner. Being aggrieved by the order dated 18.3.2002 to the extent it orders for dismissal of the

petitioner with retrospective effect this petition for writ is preferred.

It is contended by counsel for the petitioner that even after conviction under the judgment dated 27.6.1987 the petitioner was allowed to continue in service and he was placed under suspension with payment of required subsistence allowance, therefore, his dismissal with retrospective effect is illegal. According to counsel for the petitioner an order of dismissal cannot be passed with retrospective effect.

In reply to writ petition it is contended by counsel for the respondent Bank that clauses 19.2 and 19.3 of the First Bipartite Settlement prescribes that an employee on conviction is required to be dismissed from the date of his conviction and, therefore, the petitioner under the order dated 18.3.2002 was dismissed w.e.f. 27.6.1987.

Heard counsel for the parties.

Clauses 19.2 and 19.3 as referred by counsel for the respondent Bank read as under:-

“19.2 By the expression “offence” shall be meant any offence involving mortal turpitude for which an employee is liable to conviction and sentence under any provision of law.

19.3(a) When, in the opinion of the management, an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and, in such a case, he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in paragraph 19.6 of this Chapter."

From reading of sub-clause (b) of clause 19.3, it is apparent that the employer Bank may dismiss its employee from the date of his conviction or he may also be dealt with by imposing a lesser punishment as prescribed in para 19.6 of the Chapter concerned of the Bipartite Settlement.

In the instant matter the petitioner was convicted by Additional Chief Judicial Magistrate, SPE Cases, Jaipur on 27.6.1987 but the respondents on that date did not choose to dismiss him from service. The petitioner was allowed to continue in service till disposal of appeal preferred by him. This clearly shows that by a positive action the respondents decided to continue the petitioner in service till disposal of his appeal. The positive action taken by the respondents to continue the petitioner in service cannot be washed off by dismissing the petitioner with

retrospective effect under the order dated 18.3.2002. Such retrospective dismissal from service is not at all permissible as during the period from the date of conviction of the petitioner i.e. 27.6.1987 to 18.3.2002, the day on which the order impugned was passed, the relationship of master and servant was in existence and the petitioner drew subsistence allowance as he was under suspension. In light of the provisions of para 19.3(b) of the Bipartite Settlement it was for the respondent Bank to take appropriate action against the petitioner after his conviction under the judgment dated 27.6.1987 but the bank instead of that choose to continue the petitioner under suspension and subsistence allowance was also paid to him during the period of suspension. The effect of the order impugned shall be that he has to return the subsistence allowance already drawn. As a matter of fact the bank should have exercised powers as per para 19.3(b) in the year 1987 but for the reasons best known to bank it was not done. Now the dismissal with retrospective effect as such cannot be executed by the respondents. Accordingly, the order impugned dated 18.3.2002 is illegal to the extent it orders for dismissal of the petitioner w.e.f. 27.6.1987. Effect to the dismissal of the petitioner is required to be given from 18.3.2002 only.

Accordingly, this petition for writ is allowed. The order dated 18.3.2002 is declared illegal

to the extent it orders for dismissal of the petitioner w.e.f. 27.6.1987. The petitioner is to be treated dismissed from service w.e.f. 18.3.2002.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.